

AMENDED IN ASSEMBLY JUNE 26, 2003

AMENDED IN SENATE JUNE 3, 2003

AMENDED IN SENATE MAY 12, 2003

AMENDED IN SENATE APRIL 30, 2003

AMENDED IN SENATE APRIL 29, 2003

AMENDED IN SENATE APRIL 21, 2003

SENATE BILL

No. 602

Introduced by Senator Figueroa

(Coauthors: Senators Kuehl and Romero)

(Coauthors: Assembly Members Koretz, Levine, Pavley, and Reyes)

February 20, 2003

An act to amend Sections 1785.11.1 and 1785.11.2 of, to add Section 1799.1b to, to add Title 1.81.2 (commencing with Section 1798.90.1) to Part 4 of Division 3 to, the Civil Code, to amend Sections 530.6 and 530.8 of the Penal Code, and to amend Section 2891 of the Public Utilities Code, relating to personal information.

LEGISLATIVE COUNSEL'S DIGEST

SB 602, as amended, Figueroa. Personal information.

(1) The Consumer Credit Reporting Agencies Act permits a consumer to place a security alert in his or her credit report by making a request in writing or by telephone to a consumer credit reporting agency.

This bill would provide for a penalty in an amount up to \$2,500 and reasonable attorneys' fees for a failure of a consumer credit reporting agency to place this security alert, as specified. The bill would also

require a consumer credit reporting agency to provide additional notice to the consumer regarding the expiration date of that security alert, as specified.

(2) Existing law permits a consumer credit reporting agency to charge a reasonable fee to any consumer who elects to, among other things, freeze his or her credit report, with a specified exception.

This bill would limit this charge to no more than a ~~one-time fee of \$10~~ *for each freeze, removal of the freeze, or temporary lift of the freeze.*

(3) Existing law permits a business to use information data encoded on a driver's license for verification purposes only.

This bill would prohibit the retention ~~or further use~~ of this information, ~~except as otherwise authorized by law~~ *unless the business is required by law to record and retain that information.* The bill would make a violation of these provisions a crime, thereby imposing a state-mandated local program.

(4) Existing law prohibits business entities, as defined, from making specified disclosures in relation to individual records.

This bill would require a business entity that provides credit, installment, or telephone accounts, as defined, that receives a change of address request from any individual who has an existing account with that entity, to send specified change of address notices.

(5) Existing law provides a procedure to initiate an investigation of potential identity theft.

This bill would make a clarification within this provision.

(6) Existing law permits a person who discovers that he or she may be a victim of identity theft to request specified reports.

This bill would permit a cause of action for a failure of a person or entity to provide these reports, and would provide for penalties and reasonable attorneys' fees, among ~~others~~ *other things.*

(7) Existing law prohibits telephone companies from making available specified information, without consent.

This bill would exempt therefrom certain information needed to pursue an identity theft investigation.

(8) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.



Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. This act shall be known and may be cited as the
2 Identity Theft Prevention and Assistance Act.

3 SEC. 2. Section 1785.11.1 of the Civil Code is amended to
4 read:

5 1785.11.1. (a) A consumer may elect to place a security alert
6 in his or her credit report by making a request in writing or by
7 telephone to a consumer credit reporting agency. "Security alert"
8 means a notice placed in a consumer's credit report, at the request
9 of the consumer, that notifies a recipient of the credit report that
10 the consumer's identity may have been used without the
11 consumer's consent to fraudulently obtain goods or services in the
12 consumer's name.

13 (b) A consumer credit reporting agency shall notify each
14 person requesting consumer credit information with respect to a
15 consumer of the existence of a security alert in the credit report of
16 ~~that consumer and the date of expiration of that security alert, that~~
17 ~~consumer~~; regardless of whether a full credit report, credit score,
18 or summary report is requested. ~~If that request was made by~~
19 ~~telephone, notice of the date of expiration of the security alert shall~~
20 ~~be made during that telephone communication. If that request was~~
21 ~~made by mail, notice of the date of expiration of the security alert~~
22 ~~shall be made by a written disclosure sent within 10 business days~~
23 ~~of the request and printed in a clear and conspicuous manner.~~
24 ~~report is requested.~~

25 (c) Each consumer credit reporting agency shall maintain a
26 toll-free telephone number to accept security alert requests from
27 consumers 24 hours a day, seven days a week.

28 (d) The toll-free telephone number shall be included in any
29 written disclosure by a consumer credit reporting agency to any
30 consumer pursuant to Section 1785.15 and shall be printed in a
31 clear and conspicuous manner.

32 (e) A consumer credit reporting agency shall place a security
33 alert on a consumer's credit report no later than five business days
34 after receiving a request from the consumer.

1 (f) The security alert shall remain in place for at least 90 days,
2 and a consumer shall have the right to request a renewal of the
3 security alert.

4 (g) *A consumer credit reporting agency shall notify each*
5 *consumer who has requested that a security alert be placed on his*
6 *or her consumer credit report of the expiration date of the alert.*

7 (h) Notwithstanding Section 1785.19, any consumer credit
8 reporting agency that recklessly, willfully, or intentionally fails to
9 place a security alert pursuant to this section shall be liable for a
10 penalty in an amount of up to two thousand five hundred dollars
11 (\$2,500) and reasonable attorneys' fees.

12 SEC. 3. Section 1785.11.2 of the Civil Code is amended to
13 read:

14 1785.11.2. (a) A consumer may elect to place a security
15 freeze on his or her credit report by making a request in writing by
16 certified mail to a consumer credit reporting agency. "Security
17 freeze" means a notice placed in a consumer's credit report, at the
18 request of the consumer and subject to certain exceptions, that
19 prohibits the consumer credit reporting agency from releasing the
20 consumer's credit report or any information from it without the
21 express authorization of the consumer. If a security freeze is in
22 place, information from a consumer's credit report may not be
23 released to a third party without prior express authorization from
24 the consumer. This subdivision does not prevent a consumer credit
25 reporting agency from advising a third party that a security freeze
26 is in effect with respect to the consumer's credit report.

27 (b) A consumer credit reporting agency shall place a security
28 freeze on a consumer's credit report no later than five business
29 days after receiving a written request from the consumer.

30 (c) The consumer credit reporting agency shall send a written
31 confirmation of the security freeze to the consumer within 10
32 business days and shall provide the consumer with a unique
33 personal identification number or password to be used by the
34 consumer when providing authorization for the release of his or
35 her credit for a specific party or period of time.

36 (d) If the consumer wishes to allow his or her credit report to
37 be accessed for a specific party or period of time while a freeze is
38 in place, he or she shall contact the consumer credit reporting
39 agency, request that the freeze be temporarily lifted, and provide
40 the following:

1 (1) Proper identification, as defined in subdivision (c) of
2 Section 1785.15.

3 (2) The unique personal identification number or password
4 provided by the credit reporting agency pursuant to subdivision
5 (c).

6 (3) The proper information regarding the third party who is to
7 receive the credit report or the time period for which the report
8 shall be available to users of the credit report.

9 (e) A consumer credit reporting agency that receives a request
10 from a consumer to temporarily lift a freeze on a credit report
11 pursuant to subdivision (d), shall comply with the request no later
12 than three business days after receiving the request.

13 (f) A consumer credit reporting agency may develop
14 procedures involving the use of telephone, fax, the Internet, or
15 other electronic media to receive and process a request from a
16 consumer to temporarily lift a freeze on a credit report pursuant to
17 subdivision (d) in an expedited manner.

18 (g) A consumer credit reporting agency shall remove or
19 temporarily lift a freeze placed on a consumer's credit report only
20 in the following cases:

21 (1) Upon consumer request, pursuant to subdivision (d) or (j).

22 (2) If the consumer's credit report was frozen due to a material
23 misrepresentation of fact by the consumer. If a consumer credit
24 reporting agency intends to remove a freeze upon a consumer's
25 credit report pursuant to this paragraph, the consumer credit
26 reporting agency shall notify the consumer in writing prior to
27 removing the freeze on the consumer's credit report.

28 (h) If a third party requests access to a consumer credit report
29 on which a security freeze is in effect, and this request is in
30 connection with an application for credit or any other use, and the
31 consumer does not allow his or her credit report to be accessed for
32 that specific party or period of time, the third party may treat the
33 application as incomplete.

34 (i) If a consumer requests a security freeze, the consumer credit
35 reporting agency shall disclose the process of placing and
36 temporarily lifting a freeze, and the process for allowing access to
37 information from the consumer's credit report for a specific party
38 or period of time while the freeze is in place.

39 (j) A security freeze shall remain in place until the consumer
40 requests that the security freeze be removed. A consumer credit

1 reporting agency shall remove a security freeze within three
2 business days of receiving a request for removal from the
3 consumer, who provides both of the following:

4 (1) Proper identification, as defined in subdivision (c) of
5 Section 1785.15.

6 (2) The unique personal identification number or password
7 provided by the credit reporting agency pursuant to subdivision
8 (c).

9 (k) A consumer credit reporting agency shall require proper
10 identification, as defined in subdivision (c) of Section 1785.15, of
11 the person making a request to place or remove a security freeze.

12 (l) The provisions of this section do not apply to the use of a
13 consumer credit report by any of the following:

14 (1) A person or entity, or a subsidiary, affiliate, or agent of that
15 person or entity, or an assignee of a financial obligation owing by
16 the consumer to that person or entity, or a prospective assignee of
17 a financial obligation owing by the consumer to that person or
18 entity in conjunction with the proposed purchase of the financial
19 obligation, with which the consumer has or had prior to
20 assignment an account or contract, including a demand deposit
21 account, or to whom the consumer issued a negotiable instrument,
22 for the purposes of reviewing the account or collecting the
23 financial obligation owing for the account, contract, or negotiable
24 instrument. For purposes of this paragraph, “reviewing the
25 account” includes activities related to account maintenance,
26 monitoring, credit line increases, and account upgrades and
27 enhancements.

28 (2) A subsidiary, affiliate, agent, assignee, or prospective
29 assignee of a person to whom access has been granted under
30 subdivision (d) of Section 1785.11.2 for purposes of facilitating
31 the extension of credit or other permissible use.

32 (3) Any state or local agency, law enforcement agency, trial
33 court, or private collection agency acting pursuant to a court order,
34 warrant, or subpoena.

35 (4) A child support agency acting pursuant to Chapter 2 of
36 Division 17 of the Family Code or Title IV-D of the Social Security
37 Act (42 U.S.C. et seq.).

38 (5) The State Department of Health Services or its agents or
39 assigns acting to investigate Medi-Cal fraud.

(6) The Franchise Tax Board or its agents or assigns acting to investigate or collect delinquent taxes or unpaid court orders or to fulfill any of its other statutory responsibilities.

(7) The use of credit information for the purposes of prescreening as provided for by the federal Fair Credit Reporting Act.

(8) Any person or entity administering a credit file monitoring subscription service to which the consumer has subscribed.

(9) Any person or entity for the purpose of providing a consumer with a copy of his or her credit report upon the consumer's request.

(m) This act does not prevent a consumer credit reporting agency ~~from charging no more than a one-time fee of ten dollars (\$10) to a consumer who elects to freeze, remove the freeze, or temporarily lift~~ agency from charging a fee of no more than ten dollars (\$10) to a consumer for each freeze, removal of the freeze, or temporary lift of the freeze regarding access to a consumer credit report, except that a consumer credit reporting agency may not charge a fee to a victim of identity theft who has submitted a valid police report or valid Department of Motor Vehicles investigative report that alleges a violation of Section 530.5 of the Penal Code.

SEC. 4. Title 1.81.2 (commencing with Section 1798.90.1) is added to Part 4 of Division 3 of the Civil Code, to read:

TITLE 1.81.2. CONFIDENTIALITY OF DRIVER'S
LICENSE INFORMATION

1798.90.1. (a) Any business may swipe a driver's license in any electronic device for purposes of verification of age and authentication of the driver's license, but may not retain or further use that information for any other purpose, ~~except where otherwise authorized by law and only to the extent authorized by law. unless~~ the business is required by law to record and retain that information.

(b) As used in this section, "business" means a proprietorship, partnership, corporation, or any other form of commercial enterprise.

(c) A violation of this section constitutes a misdemeanor punishable by imprisonment in a county jail for no more than one

1 year, or by a fine of no more than ten thousand dollars (\$10,000),
2 or by both.

3 SEC. 5. Section 1799.1b is added to the Civil Code, to read:

4 1799.1b. (a) Any business entity that provides credit,
5 installment, or telephone accounts that receives a change of
6 address request from any individual that has an existing credit,
7 installment, or telephone account with that entity shall send within
8 30 days of receipt of that request a change of address notification
9 to the previous address of record ~~and to the new address~~. *If that*
10 *business entity reasonably believes that it has the current*
11 *telephone number or e-mail address for that individual, it may*
12 *provide the change of address notification via e-mail or telephone*
13 *communication. The notifications may not contain the consumer's*
14 *name, account number, social security number, or other personal*
15 *identifying information.*

16 (b) The following definitions shall apply to this section:

17 (1) "Credit account" has the same meaning as "credit card,"
18 as defined in subdivision (a) of Section 1747.02.

19 (2) "Installment account" has the same meaning as that
20 provided in Section 1802.7.

21 (3) "Telephone account" means an account with a telephone
22 corporation, as defined in Section 234 of the Public Utilities Code.

23 SEC. 6. Section 530.6 of the Penal Code is amended to read:

24 530.6. (a) A person who has learned or reasonably suspects
25 that his or her personal identifying information has been
26 unlawfully used by another, as described in subdivision (a) of
27 Section 530.5, may initiate a law enforcement investigation by
28 contacting the local law enforcement agency that has jurisdiction
29 over his or her actual residence, which shall take a police report of
30 the matter, provide the complainant with a copy of that report, and
31 begin an investigation of the facts. If the suspected crime was
32 committed in a different jurisdiction, the local law enforcement
33 agency may refer the matter to the law enforcement agency where
34 the suspected crime was committed for further investigation of the
35 facts.

36 (b) A person who reasonably believes that he or she is the
37 victim of identity theft may petition a court, or the court, on its own
38 motion or upon application of the prosecuting attorney, may move,
39 for an expedited judicial determination of his or her factual
40 innocence, where the perpetrator of the identity theft was arrested

for, cited for, or convicted of a crime under the victim's identity, or where a criminal complaint has been filed against the perpetrator in the victim's name, or where the victim's identity has been mistakenly associated with a record of criminal conviction. Any judicial determination of factual innocence made pursuant to this section may be heard and determined upon declarations, affidavits, police reports, or other material, relevant, and reliable information submitted by the parties or ordered to be part of the record by the court. Where the court determines that the petition or motion is meritorious and that there is no reasonable cause to believe that the victim committed the offense for which the perpetrator of the identity theft was arrested, cited, convicted, or subject to a criminal complaint in the victim's name, or that the victim's identity has been mistakenly associated with a record of criminal conviction, the court shall find the victim factually innocent of that offense. If the victim is found factually innocent, the court shall issue an order certifying this determination.

(c) After a court has issued a determination of factual innocence pursuant to this section, the court may order the name and associated personal identifying information contained in court records, files, and indexes accessible by the public deleted, sealed, or labeled to show that the data is impersonated and does not reflect the defendant's identity.

(d) A court that has issued a determination of factual innocence pursuant to this section may at any time vacate that determination if the petition, or any information submitted in support of the petition, is found to contain any material misrepresentation or fraud.

(e) The Judicial Council of California shall develop a form for use in issuing an order pursuant to this section.

SEC. 7. Section 530.8 of the Penal Code is amended to read:

530.8. (a) If a person discovers that an application in his or her name for a loan, credit line or account, credit card, charge card, public utility service, or commercial mobile radio service has been filed with any person or entity by an unauthorized person, or that an account in his or her name has been opened with a bank, trust company, savings association, credit union, public utility, or commercial mobile radio service provider by an unauthorized person, then, upon presenting to the person or entity with which the application was filed or the account was opened a copy of a

1 police report prepared pursuant to Section 530.6 and identifying
2 information in the categories of information that the unauthorized
3 person used to complete the application or to open the account, the
4 person, or a law enforcement officer specified by the person, shall
5 be entitled to receive information related to the application or
6 account, including a copy of the unauthorized person's application
7 or application information and a record of transactions or charges
8 associated with the application or account. Upon request by the
9 person in whose name the application was filed or in whose name
10 the account was opened, the person or entity with which the
11 application was filed shall inform him or her of the categories of
12 identifying information that the unauthorized person used to
13 complete the application or to open the account. The person or
14 entity with which the application was filed or the account was
15 opened shall provide copies of all forms and information required
16 by this section, without charge, within 10 business days of receipt
17 of the person's request and submission of the required copy of the
18 police report and identifying information.

19 (b) Any request made pursuant to subdivision (a) to a person or
20 entity subject to the provisions of Section 2891 of the Public
21 Utilities Code shall be in writing and the requesting person shall
22 be deemed to be the subscriber for purposes of that section.

23 (c) (1) Before a person or entity provides copies to a law
24 enforcement officer pursuant to subdivision (a), the person or
25 entity may require the requesting person to submit a signed and
26 dated statement by which the requesting person does all of the
27 following:

28 (A) Authorizes disclosure for a stated period.

29 (B) Specifies the name of the agency or department to which
30 the disclosure is authorized.

31 (C) Identifies the types of records that the requesting person
32 authorizes to be disclosed.

33 (2) The person or entity shall include in the statement to be
34 signed by the requesting person a notice that the requesting person
35 has the right at any time to revoke the authorization.

36 (d) (1) A failure to produce records pursuant to subdivision (a)
37 shall be addressed by the court in the jurisdiction ~~that in which~~ the
38 victim resides ~~in and where or in which~~ the request for information
39 was issued ~~from. Upon motion by~~ *At the victim's request*, the
40 Attorney General, the district attorney, or the prosecuting city

1 attorney, ~~the court may~~ *may file a petition to compel the attendance*
2 *of the person or entity in possession of the records, as described in*
3 *subdivision (a), and order the production of the requested records*
4 *to the court. Unless the parties to the proceeding agree otherwise,*
5 *following a hearing, the court shall order the release of records as*
6 *required pursuant to this section. The court shall hear and decide*
7 *that motion no later than 10 court days after the motion is served*
8 *and filed to the court. The petition shall contain a declaration*
9 *from the victim stating when the request for information was made,*
10 *that the information requested was not provided, and what*
11 *response, if any, was made by the person or entity. The petition*
12 *shall also contain copies of the police report prepared pursuant to*
13 *Section 530.6 and the request for information made pursuant to*
14 *this section upon the person or entity in possession of the records,*
15 *as described in subdivision (a), and these two documents shall be*
16 *kept confidential by the court. The petition and copies of the police*
17 *report and the application shall be served upon the person or entity*
18 *in possession of the records, as described in subdivision (a). The*
19 *court shall hold a hearing on the petition no later than 10 court*
20 *days after the petition is served and filed. The court shall order the*
21 *release of records to the victim as required pursuant to this section.*

22 (2) In addition to any other civil remedy available, the victim
23 may bring a civil action against the entity for damages, injunctive
24 relief or other equitable relief, and a penalty of one hundred dollars
25 (\$100) per day of noncompliance, plus reasonable attorneys' fees.

26 (e) As used in this section, "application" includes the addition
27 of authorized users to an existing account or any other changes
28 made to an existing account.

29 (f) As used in this section, "law enforcement officer" means
30 a peace officer as defined by Section 830.1 of the Penal Code.

31 (g) As used in this section, "commercial mobile radio service"
32 means "commercial mobile radio service" as defined in section
33 20.3 of Title 47 of the Code of Federal Regulations.

34 SEC. 8. Section 2891 of the Public Utilities Code is amended
35 to read:

36 2891. (a) No telephone or telegraph corporation shall make
37 available to any other person or corporation, without first
38 obtaining the residential subscriber's consent, in writing, any of
39 the following information:

(1) The subscriber's personal calling patterns, including any listing of the telephone or other access numbers called by the subscriber, but excluding the identification to the person called of the person calling and the telephone number from which the call was placed, subject to the restrictions in Section 2893, and also excluding billing information concerning the person calling which federal law or regulation requires a telephone corporation to provide to the person called.

(2) The residential subscriber's credit or other personal financial information, except when the corporation is ordered by the commission to provide this information to any electrical, gas, heat, telephone, telegraph, or water corporation, or centralized credit check system, for the purpose of determining the creditworthiness of new utility subscribers.

(3) The services which the residential subscriber purchases from the corporation or from independent suppliers of information services who use the corporation's telephone or telegraph line to provide service to the residential subscriber.

(4) Demographic information about individual residential subscribers, or aggregate information from which individual identities and characteristics have not been removed.

(b) Any residential subscriber who gives his or her written consent for the release of one or more of the categories of personal information specified in subdivision (a) shall be informed by the telephone or telegraph corporation regarding the identity of each person or corporation to whom the information has been released, upon written request. The corporation shall notify every residential subscriber of the provisions of this subdivision whenever consent is requested pursuant to this subdivision.

(c) Any residential subscriber who has, pursuant to subdivision (b), given written consent for the release of one or more of the categories of personal information specified in subdivision (a) may rescind this consent upon submission of a written notice to the telephone or telegraph corporation. The corporation shall cease to make available any personal information about the subscriber, within 30 days following receipt of notice given pursuant to this subdivision.

(d) This section does not apply to any of the following:

(1) Information provided by residential subscribers for inclusion in the corporation's directory of subscribers.

1 (2) Information customarily provided by the corporation
2 through directory assistance services.

3 (3) Postal ZIP Code information.

4 (4) Information provided under supervision of the commission
5 to a collection agency by the telephone corporation exclusively for
6 the collection of unpaid debts.

7 (5) Information provided to an emergency service agency
8 responding to a 911 telephone call or any other call communicating
9 an imminent threat to life or property.

10 (6) Information provided to a law enforcement agency in
11 response to lawful process.

12 (7) Information which is required by the commission pursuant
13 to its jurisdiction and control over telephone and telegraph
14 corporations.

15 (8) Information transmitted between telephone or telegraph
16 corporations pursuant to the furnishing of telephone service
17 between or within service areas.

18 (9) Information required to be provided by the corporation
19 pursuant to rules and orders of the commission or the Federal
20 Communications Commission regarding the provision over
21 telephone lines by parties other than the telephone and telegraph
22 corporations of telephone or information services.

23 (10) The name and address of the lifeline customers of a
24 telephone corporation provided by that telephone corporation to
25 a public utility for the sole purpose of low-income ratepayer
26 assistance outreach efforts. The telephone corporation receiving
27 the information request pursuant to this paragraph may charge the
28 requesting utility for the cost of the search and release of the
29 requested information. The commission, in its annual low-income
30 ratepayer assistance report, shall assess whether this information
31 has been helpful in the low-income ratepayer assistance outreach
32 efforts.

33 (11) Information provided in response to a request pursuant to
34 subdivision (a) of Section 530.8 of the Penal Code.

35 (e) Every violation is a grounds for a civil suit by the aggrieved
36 residential subscriber against the telephone or telegraph
37 corporation and its employees responsible for the violation.

38 (f) For purposes of this section, "access number" means a
39 telex, teletex, facsimile, computer modem, or any other code
40 which is used by a residential subscriber of a telephone or

1 telegraph corporation to direct a communication to another
2 subscriber of the same or another telephone or telegraph
3 corporation.

4 SEC. 9. No reimbursement is required by this act pursuant to
5 Section 6 of Article XIII B of the California Constitution because
6 the only costs that may be incurred by a local agency or school
7 district will be incurred because this act creates a new crime or
8 infraction, eliminates a crime or infraction, or changes the penalty
9 for a crime or infraction, within the meaning of Section 17556 of
10 the Government Code, or changes the definition of a crime within
11 the meaning of Section 6 of Article XIII B of the California
12 Constitution.

